

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

ALYESKA PIPELINE SERVICE CO.

Employer

and

Case 19-RC-14600

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND
ENERGY WORKERS, LOCAL 8-0369, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned finds:²

SUMMARY

The Employer, Alyeska Pipeline Service Co., operates and maintains the Trans Alaska Pipeline System ("TAPS"). TAPS transports crude oil from its point of origin on the North Slope, 800 miles south to its termination point at Valdez,

¹ Briefs from both parties were timely received and duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization herein involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Additionally, the hearing officer deferred to me the decision regarding the admission of Employer's Exhibits 70 and 71. Those exhibits are Employer documents relating to the transfer of employees -- a relevant issue in this matter. The Petitioner's objection essentially deals with the concern that these exhibits were not produced for Petitioner pursuant to its subpoena served on the Employer prior to the hearing. However, the documents were introduced by the Employer, not in its case in chief but on rebuttal after Petitioner's case caused the Employer to make a closer look for transfer documents, which are not kept in a central location. Under these circumstances, I have decided to admit Employer's Exhibits 70 and 71 over Petitioner's objections.

Alaska. At Valdez, the Employer operates the Valdez Marine Terminal (“VMT”), where the piped crude oil is loaded onto tankers for transport. The Petitioner filed the instant petition seeking a unit of all full-time and regular part-time operations and maintenance employees (collectively referred to as “technicians”) at the Employer’s VMT facility.³

The Petitioner argues that the petitioned-for unit, as a single-facility unit, is appropriate under the Board’s single-facility unit presumption. In contrast, the Employer contends that the only appropriate unit must be a system-wide unit for two reasons. First, TAPS is so functionally integrated that anything less than a system-wide unit would be inappropriate. Second, TAPS is an employer in “public utility” industry where the Board generally has held a system-wide unit the optimum bargaining unit due to the essential service rendered to the public by public utilities and the integrated and interdependent nature of their operations.

Based the record and applicable Board law, I find, in agreement with the Petitioner, that the petitioned-for unit, as a single-facility unit, constitutes an appropriate unit.⁴ The VMT technicians share a community of interest appropriate for constituting a single facility bargaining unit. The evidence fails to rebut the Board’s longstanding single-facility presumption. Additionally, the evidence fails to establish that TAPS is a “public utility” under Board law

Below, I have set forth the evidence presented in the hearing on this matter, describing the Employer’s operations generally and the community of interest factors pertinent to my analysis. Following the evidence section is my analysis of the applicable legal standards and a section setting forth the direction of election.

I. EVIDENCE

A.) The Facilities

The Employer, Alyeska Pipeline Service Co., is engaged in the operation and maintenance of TAPS. TAPS is an 800-mile pipeline that transports crude oil from the North Slope south to the VMT in Valdez, Alaska. Five oil companies collectively own TAPS.⁵ Alyeska is a closely held corporation owned by those

³ There are approximately 163 employees in the petitioned-for unit. The parties, by stipulation, clarified that the bargaining unit would include operations, maintenance and laboratory technicians.

⁴ The parties stipulated that the following employees are Section 2(11) supervisors under the Act: CEO David Wight, COO David Hisey, Oil Movement Manager Mike Joyner, VP Operations and Maintenance Greg Jones, Terminal Manager Rod Hansen, BWT/Marine Operations Manager Joe Kuchin, Maintenance Manager Bill Amberg, PV/OMS Operations Manager Tom Stokes, Valdez Lab Supervisor Satch Tapangco, all VMT Operations Supervisors, all VMT Maintenance Supervisors and all VMT Operations Supervisors. Additionally, the parties stipulated that Dale Bruns, Paul Smith and Duane Edelman are currently functioning as “step-up supervisors” and as Section 2(11) supervisors and, therefore, are not eligible to vote. Based upon the parties’ stipulation and the record, I find that the above individuals are supervisors within meaning of Section 2(11) of the Act and, thus, are excluded from the bargaining unit.

⁵ BP Pipelines (Alaska) Inc.; Exxon Mobil Pipeline Company; Philips Transportation Alaska, Inc.; Unocal Pipeline Company; and Williams Alaska Pipeline Company, L.L.C.

five oil companies and was created to build, maintain and operate TAPS. TAPS currently transports about one million barrels of oil a day, which is approximately 20% of the United States domestic crude oil production. TAPS, as a system, is made up of several pump stations along the pipeline and a terminal facility near Valdez, Alaska.

There are approximately 163 technicians working at the VMT in its various departments. The VMT's primary functions are to temporarily store the crude oil coming off the pipeline and to load the crude oil onto tankers for transport. The VMT has an extensive tank farm system that can store about 9 million barrels of oil. The VMT also has several berthing ports used to load the crude oil onto tankers. Additionally, the VMT has a biological treatment facility to treat ballast water removed from the tankers.

Beyond the VMT, the Employer also operates several pump stations along the pipeline, along which the Employer employs an additional 165 employees. Currently, there are seven staffed pump stations along the pipeline.⁶ Pump Station 1, near the North Slope, is approximately 800 miles from the VMT. Pump Station 3 is approximately 696 miles from the VMT. Pump Station 4 is approximately 656 miles from the VMT. Pump Station 5 is approximately 525 miles from the VMT.⁷ Pump Station 7 is approximately 386 miles from the VMT. Pump Station 9 is approximately 251 miles from the VMT. And Pump Station 12 is approximately 65 miles from the VMT.

With the exception of Pump Station 9, which is located near Delta Junction, six out of the seven operational pump stations are located in remote areas. At these six locations, the Employer pays to transport the employees to and from the stations, usually by aircraft. Additionally, the Employer provides "Personal Living Quarters" in which it houses and feeds the employees during their work week(s).

B.) Functional Integration of the Operation of TAPS

Although TAPS has individual pump stations and a separate marine terminal, it is, by its nature, a functionally integrated system designed to move crude oil from one point to another. The OCC, which is the nerve center of TAPS, has centralized control over the crude oil flowing through the system at all times. OCC controllers monitor the entire system from their office at the VMT. The Employer maintains several system-wide programs to ensure the safe and efficient operation of TAPS. In particular, the Employer maintains system-wide maintenance and safety programs, which are requirements of its lease agreements with the State of Alaska and the federal government, to ensure the safe and environmentally clean operation of its system. Additionally, the

⁶ There were 12 pump stations in the original design of the pipeline. Due to operational needs, only 11 were actually built and only 7 are in regular operation today.

⁷ Pump Station 5 is currently being operated as a "relief station." Pump Station 5 has several storage tanks but does not have a mainline pump. The purpose of Pump Station 5 is to temporarily divert oil off the pipeline to relieve pressure on the pipeline.

Employer maintains a system-wide telecommunications system so that OCC controllers can be in constant contact with all facilities in the system.

C.) Managerial and Supervisory Structure⁸

David Wight is the Employer's CEO. Reporting to Wight is COO Dan Hisey. Reporting to Hisey are Oil Movement Manager Mike Joyner and Vice President of Operations and Maintenance Greg Jones. Reporting to Joyner is Lab Services Supervisor Juliet Cruz, who oversees the Employer's three laboratories located at VMT, Pump Station 1 and at the North Pole Metering Station.⁹ Valdez Lab Supervisor Satch Tapangco supervises the VMT laboratory and reports to Cruz. Reporting to Vice President of Operations and Maintenance Greg Jones are Pipeline Manager Jim Johnson and VMT Terminal Manager Rod Hanson. There are two more levels of management under Pipeline Manager Jim Johnson on the pipeline side of the Employer's operation. Reporting to VMT Terminal Manager Hanson are VMT Ballast Water Treatment/Marine Manager Joe Kuchin, Maintenance Manager Bill Amberg and PV/OMS Operations Manager Tom Stokes. Kuchin has three VMT Operations Supervisors reporting to him. Amberg has three VMT Maintenance Supervisors reporting to him. Stokes has four VMT Operations Supervisors reporting to him.

In sum, the VMT and pipeline are separated into two administrative subdivisions of TAPS. Each side is headed by its own Manager, Terminal Manager Rod Hanson on the VMT side and Pipeline Manager Jim Johnson on the pipeline side. Technicians on the pipeline and technicians at the VMT share common supervision at the fourth level of management with Vice President of Operations and Maintenance Greg Jones.

D.) Conditions of Employment/Control of Labor Relations/ Local Autonomy

Labor relations are sometimes handled at a corporate level and sometimes at a local level. In general, the Employer's labor relations are centralized at a policy level, but are usually administered on a day-to-day basis, with some autonomy, at a local level.

The Employer's headquarters are in Anchorage, Alaska, where its Human Resource Department is located. The Employer's financial, fire/safety, regulatory compliance, training and payroll departments all operate out of its corporate headquarters in Anchorage. Employees Company-wide share the same work schedules,¹⁰ pay scales, benefits plans and share much of the same policy manuals and codes of conduct.

However, much of the labor relations are administered locally. There are two Human Resource specialists assigned to the VMT who administer the

⁸ For a hierarchical chart of the Employer's managerial structure, see Employer's Exhibit 7.

⁹ The North Pole Metering Station is located on the pipeline, in between Pump Stations 7 and 8.

¹⁰ Employees at both the VMT and on the pipeline work 26 weeks per year. They either work a two-week-on, two-week-off schedule or a one-week-on, one-week-off schedule.

Company's human resource policies at the VMT. Additionally, local supervisors, both at the VMT and on the pipeline, have independent authority to grant overtime, sick leave and vacation. With respect to discipline, local supervisors independently handle lower levels of discipline such as counselings and written warnings. A joint committee, made up of local-level and corporate-level managers, administers more formal discipline like suspensions and terminations. Hiring decisions are ultimately made at a corporate level. However, local management has significant input in the process and is involved in both interviewing the candidate and making recommendations about the candidate. Orientation and training for newly hired employees are done through a combination of centralized and local-level training programs. The corporate level training programs tend to cover those things common to all employees such as benefit plans, Company-wide policies and Company-wide safety and operations procedures. The final part of training and orientation is usually done at a local level by local management and covers site-specific and job-specific training.

E.) Skills and Geographic Locations of Work

The essential function of a pump station is to help move the crude oil down the pipeline. The essential functions of the VMT are to accept the oil from the pipeline and to load it onto tankers. Despite that distinction, there are some common equipment and some common skills necessary to operate both the VMT and the pump stations.

All technicians working at the VMT and on the pipeline share some common skills, training and functions. For example, the maintenance technicians at the VMT perform many of the same tasks as the maintenance technicians on the pipeline, with the exception of the occasional work on certain valves or pumps that are unique to the pump stations.

However, there are several types of VMT technicians who have no functional equivalent on the pipeline. For example, technicians who work in the berthing area of VMT or on the Ballast Water Treatment facility at VMT have no functional equivalent on the pipeline and perform work unique to the VMT. Likewise, several pump station technicians work on jet engines that run a reaction turbine on the pump station pump. This work is exclusive to pump stations and has no functional equivalent at the VMT.

With respect to promotion, all technicians, Company-wide, are promoted via a six-step skilled progression unique to each type of technician. The skilled progression is tied to the technician's pay scale and is evaluated by his or her local supervisor. Each technician must "prove up" to next skill level in order to progress on the pay scale. The early steps of the skilled progressions tend to have skills common to most types of technicians. The higher-level skills sets, i.e., Levels 4, 5 and 6, tend to be specific to the type of technician and the location of his or her work. These skill sets are developed at a corporate level, with input from the field, and administered by local supervisors. The local supervisor is responsible for evaluating each technician working under him or

her. Likewise, the local supervisor is responsible for promoting a technician through the skill levels.

As described above, six of the seven pump stations along the pipeline are located in remote areas.¹¹ As such, the Employer transports the employees in and out of the pump station areas and houses and feeds the employees working at these six pump stations during their work week(s) at the pump stations' Personal Living Quarters. However, the VMT has no Personal Living Quarters. All employees at the VMT get to and from work on their own and are not provided housing or meals during their work week(s).

F.) Interchange of Employees

There is little evidence to suggest that employees regularly transfer between VMT and the pipeline. In the past five years, an estimated three to five employees have transferred between the VMT and pump stations on the pipeline out of a group of over 320 employees.¹² When employees do transfer, they retain their pay and skill level but they must, over a 1 to 2 year period, essentially prove that they are qualified to perform at that level in the position at the location into which they transferred. Regardless, there is no evidence to suggest that transfers are frequent or regular.

Most VMT technicians have little or no contact with technicians working on the pipeline during their day-to-day work routine. Each technician group, either at the VMT or at a pump station, generally has its own tools, technicians and supervisors. The day-to-day work of a particular technician is usually confined to his or her particular work location and his or her particular area of expertise. There are instances of contact between VMT and pipeline technicians. However, evidence of these contacts is usually brief and confined to special projects like updating procedural manuals or line-wide equipment upgrades and maintenance. In short, most VMT technicians do not come in contact with pipeline technicians on a day-to-day basis.

G.) Bargaining History

The record reveals no evidence of bargaining history with this Employer and any union.

H.) Public Regulation of TAPS

TAPS is subject to regulatory oversight by both the State of Alaska and the Federal Government. The five owners of TAPS each have Pipeline-Rights-

¹¹ The exception to this is Pump Station 9, which is located near Delta Junction, Alaska. Most employees who work at Pump Station 9 live in Delta Junction. Unlike the other pump stations, employees who live in Delta Junction and work at Pump Station 9 are not transported to work by the Employer or provided living quarters during their work week(s).

¹² These estimated numbers come from a combination of Employer's Exhibit 19 and Petitioner's Exhibit 6. Employer's Exhibit 19 represents the collective recollection of several of the Employer's managers regarding employees who have transferred between the VMT and the pipeline during the period of 1977 to the present, but does not contain the specific dates of the transfers. Petitioner's Exhibit 6 is the same document but includes the dates of transfer, which were compiled from subpoenaed transfer records.

of-Way leases from the State of Alaska. These leases are issued and regulated through the Regulatory Commission of Alaska and allow the Employer to operate TAPS over a combination of state and federal land. The terms of these leases require the Employer to maintain certain safety and preventative maintenance procedures to safeguard the public and environmental interests. The record does not identify the ultimate destination of the crude oil leaving the VMT or the regulatory bodies, if any, governing the oil once it leaves the VMT.¹³

II. ANALYSIS:

The Union seeks to represent technicians at the Employer's VMT location. The Employer contends that the single facility VMT is inappropriate and the smallest appropriate unit would be a system-wide unit. The Employer's position is based on its assertion that TAPS is a public utility and, thus, falls under the Board's presumption of system-wide units for public utilities.

A.) The Board's Unit Presumption Standards

With respect to most industries, save the public utility industry, it is well established that a single-facility unit is presumptively appropriate. Therefore, unless it has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity, the single facility unit is an appropriate unit. See *J & L Plate*, 310 NLRB 429 (1993); *Dixie Belle Mills, Inc.*, 138 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990), *R&D Trucking*, 327 NLRB 531 (1999).

In contrast, the Board has long held that a system-wide unit is the optimum bargaining unit in the public utility industry due to the essential service rendered to the public by this industry and the integrated and interdependent nature of their operations. See *Colorado Interstate Gas Co.*, 202 NLRB 847 (1973); *Deposit Telephone Co.*, 328 NLRB 1029 (1999); *Montana-Dakota Utilities Co.*, 115 NLRB 1396 (1956). The Board's rationale for a system-wide presumption for public utilities is largely a matter of public policy; namely that the public has an "immediate and direct interest in the uninterrupted maintenance of the essential services that the public utility industry alone can adequately provide." *Baltimore Gas & Elec.*, 206 NLRB 199, 201 (1973). However, the Board's public utility presumption is not absolute; rather the Board has found less than system-wide units appropriate in certain circumstances. See *PECO Energy Co.*, 322 NLRB 1074 (1997) (establishing a three-part test for rebutting the system-wide public utility presumption); *Verizon Wireless*, 341 NLRB No. 63

¹³ Apparently, the oil is shipped by tanker from the VMT to various refineries but the record does not reveal whether the oil ends up in domestic or foreign markets and to what end use (e.g., retail gasoline sales, home heating oil, etc.) the oil is put by the five oil companies comprising the Employer's ownership.

(2004) (although ultimately not deciding the issue on the public utility presumption, the Board reiterated the three-part test found in *PECO*).

B.) Single-Facility Unit Appropriate

Applying the Board's single-facility presumption and general community of interest standards, I find the VMT technicians to be an appropriate unit for purposes of collective bargaining. Although a pipeline-wide unit would arguably be *an* appropriate unit, it would not be the *only* appropriate unit. See *Triangle Bldg. Products, Corp.*, 338 NLRB No. 29, slip opinion at 13 (2002) ("It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit.").

I recognize that there are facts that militate for a system-wide unit. TAPS, at an operational level, is a functionally integrated system designed to move crude oil from one area to another. It has several system-wide programs to facilitate that purpose such as system-wide maintenance, safety and communications systems. There is some evidence of limited employee interchange between the VMT and the pipeline as well as work-related contact between the two groups. Additionally, all employees share the same work schedules, rates of pay, benefits, and many of the same procedural manuals.

Despite these commonalities, the record as a whole supports a conclusion that the VMT technicians enjoy a community of interest separate and distinct from the technicians on the pipeline. The Employer separates the two groups of technicians into two distinct administrative subdivisions of its operations, the VMT and the Pipeline. These two administrative subdivisions have their own respective manager, with two more levels of supervision below each of them. Additionally, local supervisors maintain significant autonomy with respect to such things as directing the day-to-day work of technicians, promoting technicians to the next pay level, granting overtime, time off for vacation and sick leave, and issuing lower level discipline.

Further, the essential function of the pipeline pump stations, where pipeline technicians work, is markedly different than the essential functions of the VMT, where VMT technicians work. The essential function of a pipeline pump station is to force the crude oil down the pipeline, whereas the essential functions of the VMT are to store the crude oil coming off the pipeline and to load the oil onto tanker ships. As such, the VMT has several facilities that pipeline pump stations do not, such as extensive tank farms, biological water treatment facilities and berthing ports.

Additionally, most pipeline technicians perform their work under very different conditions than VMT technicians. While VMT technicians go home at the end of each shift and are not paid for travel time, most pipeline technicians remain at the remote pump stations for the duration of their work week(s). Additionally, most pipeline technicians are provided transportation to and from their remote work locations and are also provided housing and meals during their work week(s), all at Company expense.

In light of the above and the record evidence, I find that the VMT technicians share a distinct community of interest separate from the pipeline technicians such that they constitute a separate and appropriate unit for purposes of collective bargaining. See *Standard Oil Co.*, 230 NLRB 967 (1977) and 241 NLRB 1248 (1979); *BP Alaska, Inc.*, 230 NLRB 986 (1977); supplemented in 234 NLRB 125 (1978); enfd. *Sohio Petroleum Co. a Div. Of Sohio Natural Resources Co. v. NLRB*, 625 F. 2d 223 (9th Cir. 1980).

C.) Public Utility Presumption Not Applicable

In its post-hearing brief, the Employer argues that the Board's single-facility presumption is inappropriate here. Instead, the Employer argues that TAPS is a "public utility" and therefore should be analyzed under the Board's public utility presumption of a system-wide unit. Although I recognize the Board's system-wide presumption for public utilities, I find its analysis inapposite to this case.

The Employer failed to cite and I am not aware of any case in which the Board has recognized a crude oil company or a crude oil pipeline as a "public utility."¹⁴ Although the Board has never clearly defined what constitutes a "public utility," the Board, in its public policy analysis of the presumption, instructs that public utilities provide an "essential service that the public utility industry alone can adequately provide." *Baltimore Gas & Elec.*, 206 NLRB at 201. They are, by definition, a monopoly. See *Black's Law Dictionary*, 6th Ed. (1990). I also note that in the Board's recent opportunity to consider extending the public utility presumption, it declined to do so. See *Verizon Wireless*, 341 NLRB No. 63 (2004).

As its authority for this presumption, the Employer cites several Board cases finding a system-wide unit to be appropriate in the public utility industry. See *New England Telephone and Telegraph Co.*, 280 NLRB 162 (1986) (telephone service); *Tennessee Gas Pipeline*, 254 NLRB 1031 (1981) (natural gas service); *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973) (natural gas and electric services). While I recognize the Board's public utility presumption as set forth in these cases, Board law appears to confine this presumption to

¹⁴ See, e.g., *Standard Oil Co.*, 230 NLRB 967 (1977) and 241 NLRB 1248 (1979). The Petitioner sought a unit of truck drivers. The Employer argued that the smallest appropriate unit was a division-wide unit. The Board found the petitioned-for unit appropriate, analyzing the facts under the general community of interest factors, with no mention of a public utility presumption for this Employer who is clearly engaged in the business of transporting crude oil. Further, see *BP Alaska, Inc.*, 230 NLRB 986 (1977); decision supplemented by 234 NLRB 125 (1978); related, *Sohio Petroleum Co. a Div. Of Sohio Natural Resources Co. (formerly BP Alaska, Inc.)*, 239 NLRB 281 (1978); enfd. *Sohio Petroleum Co. a Div. Of Sohio Natural Resources Co. v. NLRB*, 625 F. 2d 223 (9th Cir. 1980), in which the Board overturned the Regional Director's Decision finding only a system-wide unit appropriate, instead finding the lesser included unit of the employees working in the Employer's power generation department to be an appropriate unit. Interestingly, the Board found the power-generating department to be a "de facto public utility" unlike the rest of the Employer's drilling and oil production operations. In light of the foregoing, the Board does not appear to find that an oil company's operations fall within the public utility industry.

traditional public utilities such as electricity, natural gas service, telephone service and cable television service.

I do not find the traditional public utility presumption applies to a crude oil pipeline where the end user is an oil company and not the general public. TAPS is owned by five oil companies and operates for the sole benefit of those five companies. The end user of this oil is not the public, but rather the five oil companies, who take the oil from TAPS and ship it to their refineries somewhere away from Valdez, Alaska. Moreover, the indirect public benefit derived from TAPS is not something that the Employer exclusively provides. Rather, the crude oil coming off of TAPS amounts to approximately 20% of the United States' domestic production of oil and, presumably, significantly less than 20% of the United States' total consumption of oil.¹⁵ In sum, I find that the public utility presumption is not applicable to this case.

My decision that the VMT technicians constitute an appropriate unit is based upon a rejection of the argument that TAPS is a public utility under Board law. If TAPS were a public utility under Board law, I would conclude differently; namely that a system-wide unit of technicians would be the only appropriate unit under the Board's system-wide unit presumption for public utilities.

III. CONCLUSION

Based on the foregoing and the record evidence, I find that the following employees of Alyeska Pipeline Service Co. constitute a unit appropriate (hereinafter "Unit") for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time operations, maintenance and laboratory technicians working at the Employer's Valdez Marine Terminal in Valdez, Alaska; excluding all office clerical employees, guards and supervisors as defined by the Act and all other employees.

There are approximately 163 employees in the Unit.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently

¹⁵ Indeed, there is nothing in the record to suggest that all of the oil coming off the pipeline ultimately ends up in domestic, as opposed to foreign markets. In short, the Employer failed to show that, as a public utility, it is providing essential services to any domestic public market.

replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Paper, Allied-Industrial, Chemical and Energy Workers, Local 8-0369.

A.) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director of Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174, on or before **December 17, 2004**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Because the list will be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B.) Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice.

Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C.) Right To Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 27, 2004**.

DATED at Seattle, Washington, this 10th day of December 2004.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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Seattle, Washington 98174